IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4226 of 2001

Between:

1 A.P.S.R.T.C. Rep. by its Managing Director
Musheerabad, Hyderabad.
2 The Depot Manager, A.P.S.R.T.C.
Sangareddy Depot.

..... PETITIONERS

AND

1 A. Durgaiah S/o Hanumaiah
Narayanakhed Depot, Medak District.
2 The Labour Court-II, Rep. by its Presiding Officer
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, especially in the nature of Writ of Certiorari calling for the records relating to the impugned award dt. 18-7-2000 made in ID No.100/97, Labour Court-II, Hyderabad, published on 20-9-2000 setting aside the order of removal dt. 6-5-97 and directing reinstatement of 1st Respondent into service with all benefits, including continuity of service etc. though without back wages of quash the same as being illegal, without jurisdiction and invalid.

Counsel for the Petitioners: MR.V.T.M.PRASAD

Counsel for the Respondent No.1 : MR. V.NARASIMHA GOUD

Counsel for the Respondent No.2: G.P.FOR LABOUR

The Court made the following:

ORDER:

Challenging the award in I.D.No.100 of 1997, Labour Court-III, Hyderabad, dated 18.07.2000, the APSRTC filed the present writ petition.

The 1st respondent herein was the Conductor of the bus bearing No. AEZ 6008. While so, on 14.11.1996, a check was conducted by the officials of the petitioner-Corporation on route Jogipet to Parkal and noticed certain irregularities. Charge sheet dated 22.11.1996 was issued with the following charges:

i. For having violated the rule 'Issue and Start' which constitutes misconduct under Reg. 28(vi)(a) APSRTC employees (conduct) Regulations, 1963.

ii. For having failed to collect the requisite fare and issued tickets to four passengers who boarded at Kodoor stage 12/13 and found alighting at Pulkal stage No.14, which constitutes serious misconduct under Reg.28(xxxii) & (vi) (a) of APSRTC Employees (Conduct) Regulations1963.

iii. For having failed to close the SR against stage No.14 of Rs.2/- denomination which constitutes misconduct under Reg. 28(xxvi) of APSRTC Employees (conduct) Regulations 1963.

The 1st respondent submitted his explanation to the charges, but the petitioner-Corporation without considering the explanation submitted by him, ordered for domestic enquiry. Thereafter, a regular departmental enquiry was conducted. On the basis of the evidence adduced before the enquiry officer, the 1st respondent was

found guilty of the charges and as the charges were proved, the disciplinary authority issued a show cause notice of removal, to which the 1st respondent submitted his explanation to the said notice. The petitioner-corporation without considering the explanation submitted by the 1st respondent came to the conclusion that the charges were proved and passed removal order dated 06.05.1997. The appeal filed by the 1st respondent before the appellate authority was rejected. Thereafter, the 1st respondent raised I.D.No.100 of 1997. The Tribunal on elaborate consideration of the matter came to the conclusion that the punishment was quite disproportionate and harsh and passed the impugned award dated 18-07-2000, directing reinstatement of the 1st respondent into service with all benefits including continuity of service etc., but without back wages. Assailing the same, the present writ petition is filed.

Learned Standing Counsel for the petitioner contended that since it is a case of ticket irregularities and having collected the fare, the trust reposed that the conductor did not issue tickets. Therefore, it is a case of financial irregularities causing loss to the revenue of the Corporation. He further contended that out of seven passengers, he issued issue tickets to only three passengers. Since it is a case of financial irregularities, the punishment ordered by the disciplinary authority and as confirmed by the appellate authority is not inconsonance with the proved misconduct. Hence, he prays to allow the writ petition.

On the other hand, the learned Counsel appearing for the 1st respondent contended that the Tribunal exercised its discretion conferred under Section 11-A of the Industrial Disputes Act (for short “the Act”) and this Court can stick over to it so as not to call interference in the discretion exercised by the Tribunal and that there is no illegality or impropriety in modifying the punishment, as the Tribunal has power to interfere with the punishment. He further contended that as per Section-11-A of the Act, when the order of dismissal is found to be not justified, the Tribunal has power to interfere with the punishment. He also relied upon several decisions, which will be referred to at appropriate time.

It is not in dispute that the Tribunal can re-appreciate the evidence and it also has got discretionary power under Section 11-A of the Act to modify the punishment when the dismissal/removal order was not justified. The scope of judicial review

under Article 226 of the Constitution of India is also circumscribed. This Court cannot re-appreciate the evidence unless the punishment imposed by the disciplinary authority is shocking to the conscious of the Court, and then this Court can interfere. So also, when the discretion exercised by the Tribunal is not found to be without any reasons, then also this Court can interfere with the punishment. A categorical finding has been recorded by the Tribunal that the conduct of the petitioner in his further vouch safing that all the proceedings were properly and fairly conducted in his presence and they were correctly upheld by this Court, as such they are unassailable. Therefore, this Court has to go on the presumption that the enquiry held by the disciplinary authority is in accordance with law. So, once the enquiry is held to be properly conducted, the findings of the enquiry Officer are based upon any material on record. The Tribunal also considered the charges with reference to the evidence adduced before the Enquiry Officer and came to the conclusion that the charges 1 to 3 were proved against the petitioner. A further finding has been given which reads as follows:

> "A scrutiny of the above material on record, consisting of the deposition of the checking official and the petitioner and the passenger's statement which abundantly make it clear that the petitioner had already collected the requisite fare from the passenger at the boarding point itself and did not issue ticket thus violated the rules rendering himself liable for the charges made against him."

Learned Counsel for the petitioner placed strong reliance on the decision reported in *THE MILK PRODUCTS FACTORY, A.P.DAIRY DEVELOPMENT CORPORATION LTD., VIJAYAWADA VS. V.K.DURGA RAO,* wherein it was held that the Tribunal under Section 11-A was empowered to go into the question of the adequacy of the punishment. It is further held that the Tribunal has power to go into the question of adequacy or otherwise of the punishment. Even otherwise the punishment of removal in the present case, in my view, cannot be said to be unreasonable and disproportionately harsh. He also relied upon the decisions reported in *DIVISIONAL MANAGER, APSRTC AND ANOTHER VS. RAJA REDDY AND ANOTHER* and *WORKMEN OF FIRE STORE RUBBER CO., VS. THE MANAGEMENT AND OTHERS*. The discretionary powers in all these decisions deal with the powers of Tribunal under Section 11-A of the Industrial Disputes Act. So also, the decision reported in *HYDERABAD PLYWOOD INDUSTRIES PRIVATE LIMITED, NACHARAM VS. PRESIDING OFFICER, LABOUR COURT-III,*

HYDERABAD. There is no dispute as such with regard to the powers of the Tribunal under Section 11-A when the order of removal or termination or dismissal is not justified. Then the Tribunal has discretion to modify the punishment if it is found that punishment is disproportionate, by recording reasons. Mere making a mention or observation that the punishment is quite disproportionate and harsh is not sufficient to set aside the punishment of dismissal or removal. There must be some reasons and without recording any reasons, if the punishment is modified, then it can be said that it is a perverse order. One charge is with regard to violation of rule of 'Issue and Start' another charge is, failure to collect the requisite fare and issue tickets and the third charge is having failed to close the SR for Rs.2/- denomination. The learned Counsel for the petitioner contended that it is not the case of the department that the petitioner collected any amount from the passengers, but the third charge, having failed to close the S.R. for Rs.2/- denomination, it shows that the petitioner must have received amount from some passengers. Perhaps that is the reason why the Tribunal gave a categorical finding that the petitioner has already collected the requisite amount at the boarding point itself and failed to issue tickets and thus violated the rules therein. Therefore, this finding has not been challenged by the 1st respondent. So also, the said finding is not shown to be based upon no material on record. The 1st respondent is a Conductor of the bus. He has to discharge his duties properly and correctly, because of the faith and confidence reposed on him. He has to account for the tickets and also for the money collected from the passengers and he is not supposed to keep the money with him collected from the passengers without issuing tickets. So, it is a serious financial irregularity causing loss to the Corporation. Therefore, the punishment imposed by the disciplinary authority as confirmed by the appellate Authority cannot be said to be disproportionate to the proved misconduct. The Tribunal without assigning any reasons at all set aside the removal order. Therefore, it is not a case where the punishment imposed by the disciplinary authority and as confirmed by the appellate authority is shocking to the conscious of the Court. Hence, the writ petition is allowed quashing the award.

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K.C.BHANU, J

Date: 13.07.2005

MRKR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Acting Chief Justice, Bilal Nazki on this Wednesday the Thirteenth day of July Two Thousand and five.

To

1. The Labour Court-II, Rep. by its Presiding Officer
   Hyderabad.

2. Two C.D.copies.